

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**CELESTE WILLIAMS, LAUREN CRUZ,
EMANUEL O'NEALE, BRANDON
STURMAN, LATRESHA HALL,
LAKEISHA MITCHELL, CHRISTINE
BORBELY, JULIE GARIBALDI and
JANINE APONTE, on behalf of themselves
and others similarly situated,**

INDEX NO: 07cv3978-LAP

Plaintiffs,

v.

**TWENTY ONES INCORPORATED d/b/a
THE 40/40 CLUB, SHAWN CARTER p/k/a
JAY-Z, JUAN PEREZ and DESIREE
GONZALES,**

Defendants.

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DECLARATION OF CHRISTOPHER POWNALL

I, Christopher Pownall, under penalty of perjury, affirm as follows:

1. I am a New York resident and an opt-in plaintiff in the above-captioned matter.
2. I submit this declaration based on personal knowledge unless indicated otherwise.
3. I was employed as a Bartender at The 40/40 Club sports bar located at 6 West 25th

Street from approximately January through April of 2006.

4. Throughout my employment at The 40/40 Club, I was not paid the minimum wage for each hour that I worked. Instead, I only received tips. Based on conversations with other employees of The 40/40 Club such as Kalia (last name unknown) and Kristen (last name unknown) and what I witnessed, I know that it was the common practice of defendants to not pay its employees who received tips a minimum wage and/or hourly wage for any hours of work.

5. I never received a paycheck from The 40/40 Club during my employment.

Therefore, I did not receive anything which reflected my hours of work, the wages I was

Exhibit C-7

supposed to receive, or any withholdings for taxes. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know this was the common practice of defendants.

6. During my employment, I regularly worked more than forty hours in a week. However, I was not paid time and a half for hours worked in excess of forty in a week. The 40/40 Club's failure to pay overtime is reflected in the time report attached as Exhibit A. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not pay its employees an overtime premium. For example, I am personally aware that Kalia and Kristen worked more than 40 hours without being paid overtime at time and a half.

7. The time report attached as Exhibit A also shows that I worked in excess of ten (10) hours per workday for defendants but I was never paid a "spread of hours" premium. I have personally witnessed other employees working shifts of more than ten (10) hours. Based on conversations with these employees, I know it was the common practice of defendants to not pay a "spread of hours" premium for workdays in excess of ten (10) hours.

8. Attached as Exhibit B are my alleged payroll reports provided by defendants and shown to me by my lawyers. I did not receive any payroll reports during my employment at The 40/40 Club. Therefore, I never saw these documents prior to this lawsuit. Moreover, I have no reason to believe that these alleged payroll reports are an accurate reflection of my working hours at The 40/40 Club.

9. Attached as Exhibit C are my alleged W-2s provided by defendants and shown to me by my attorneys. I have no reason to believe that these alleged W-2s are an accurate reflection of what I was actually paid in wages. Furthermore, based on conversations with other

employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not provide W-2s to its employees.

10. I believe that portions of my tips were retained by defendants. The 40/40 Club did not provide us with, or require us to fill out, any sort of tip declaration form. Because The 40/40 Club did not provide us with any records establishing the amount of tips I should have received, I have no independent means of verifying these amounts. However, based on the tips given to me by patrons and what was eventually paid to me by defendants, I believe that I did not receive all of my tips due.

11. If a patron of The 40/40 Club did not sign their credit card receipt, defendants retained the disputed tip for ninety (90) days. Defendants gave me a copy of this policy, which is attached as Exhibit D.

12. I was not paid any direct wage by The 40/40 Club. Because The 40/40 Club never paid me any direct wages, I was not paid the wages I was owed in a timely manner. Other employees, such as Kaila and Kristen, have reported to me that they were not paid any direct wages by The 40/40 Club. Therefore, I know that it was the common practice of defendants to not pay its employees in a timely manner.

13. If a patron left The 40/40 Club without paying the bill, defendants would force its employees to pay the bill with his/her own money.

14. Similarly, The 40/40 Club forced employees to pay for breakages, spills, and the like.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 06 day of January, 2008.

u-z PM
Christopher Pownall

EXHIBIT A

40/40 NYC

PAGE: 1

REPORT DATE: 06/04/2007

REPORT TIME: 22:38:37.64

Payroll Report for the period from Wed Mar 1, 2006 to Fri Mar 31, 2006

REG regular OTW ovt-week OTD ovt-day MSC misc pay SAL salary ADJ adjustment DEL deleted punch * Rate changed in punch
 Types of punches not included in regular or overtime calculation: PADJ prev.period adjustment HOL holidays SHDF shift diff.pay

Employee	0719	Department	Job	Tips	Pool Type	Hours	Rate	Total
POMNALL, CHRISTOPHER		FRONT OF HOUSE	BARTENDER	500.20	REG	77.9167	3.850	299.98
End Date: 03/27/06					OTD	20.4333	0.000	0.00

Total: 77.9167 regular hours (299.98)and 20.4333 overtime hours(0.00) and 0.0000 other hoursTotal Amt 299.98

Department	Job	Day	Date	Rate	Type	In	Out	Hrs
FRONT OF HOUSE	BARTENDER	Sat.	3/4	3.850*		7:50p	5:32a	9.70
		Mon.	3/6	3.850*		4:44p	1:13a	8.48
		Fri.	3/10	3.850*		10:39p	6:45a	8.10
		Sat.	3/11	3.850		10:40p	5:26a	6.77
		Wed.	3/15	3.850*		4:32p	2:25a	9.88
		Fri.	3/17	3.850*		6:39p	6:45a	12.10
		Sat.	3/18	3.850*		11:36a	5:32a	17.93
		Mon.	3/20	3.850*		4:38p	1:46a	9.13
		Fri.	3/24	3.850		9:47p	4:56a	7.15
		Sat.	3/25	3.850*		9:39p	6:45a	9.10
Sun.	3/26	3.850		6:45a	6:45a	0.00		
Mon.	3/27	3.850		6:45a	6:45a	0.00		

***Total wages for selected employees: 299.98

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EXHIBIT B

EXHIBIT C

Form W-2 Wage and Tax Statement 2006

EMPLOYER REFERENCE COPY - DO NOT FILE

07001

a Control number 0020-Y156 000489-000400		b Employee's identification number 55-0787351		c Employer's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		Department of the Treasury - Internal Revenue Service OMB No. 1545-0008	
13 Statutory employee		14 Other		e Employee's name, address, and ZIP code CHRISTOPHER POWNALO [REDACTED]		1 Wages, tips, other compensation 1899.03	
Retirement plan		2.40				2 Federal income tax withheld 164.22	
Third-party sick pay						3 Social security wages 398.03	
Subtotal						4 Social security tax withheld 117.74	
12 See Instrs. for Box 12						5 Medicare wages and tips 1899.03	
						6 Medicare tax withheld 27.54	
						7 Social security tips 1501.00	
						8 Allocated tips	
						9 Advance EIC payment	
						10 Dependent care benefits	
						11 Nonqualified plans	
15 State NY	Employer's state ID No. 550787351	16 State wages, tips, etc. 1899.03	17 State income tax 8.64	18 Local wages, tips, etc. 1899.03	19 Local income tax 41.03	20 Locality name NY NYC	

Redacted

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EXHIBIT D

**THE 40/40 CLUB POLICY AND PROCEDURE EMPLOYEE
UNDERSTANDING**

NAME Christopher Pownall

DATE 1-28-06

POSITION Bartender

I UNDERSTAND THE FOLLOWING POLICY'S,
THEY HAVE BEEN EXPLAINED. WRITTEN,
READ AND DISCUSSED AT VARIOUS
MEETING'S.

1. THERE IS A SIX STEP CREDIT CARD
PROCEDURE, IT IS POSTED AND IF NOT
FOLLOWED MAY CAUSE MY PAYMENT OF
THE FULL AMOUNT OF THE CHECK IN
QUESTION.
2. THERE IS ZERO TOLERANCE POLICY FOR
DRUG SALE OR USE BY AN EMPLOYEE OR
CUSTOMER. ALCOHOL USE BY AN
EMPLOYEE, SERVING TO MINORS OR
INTOXICATED PATRON'S. THERE ARE
PROCEDURES THAT I MUST FOLLOW IF
ANY OF THE ZERO TOLERANCE INCIDENTS
OCCUR.
3. I MUST BE FLUENT IN ALL MENU ITEMS.
4. I MUST ATTEND WEEKLY MEETINGS.